19*46*. **File No.** O. Ch. Fees/46

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Court fees Act, 1870

(P' 11/E)

File No. O. Ch. Fees /46

Std. Sectt. Slip 24 B a.

310-A

310-A

C O N T E N T S

Legal Department File No. C. Court Fees/ 46.

Sr. No.	R.I.No./C.No.	Subject	Pages.
		Opinions Under the Court Fees Act, 1870.	
1)	C.No.3139/27-4-46.	Net Probate duty chargeable on probate of the will. Question whether the petitioners can be allowed to deduct the amount payable in Switzerland from the valuable of the assets.	1 - 2.
2)	C.No.3249/25-7-46	Question whether Intestate applications made to the Debt Adjustment Boards are liable to any Court fee.	3 - 6.
3)	C.No.3344/8-8-46.	Question whether fees are chargeable under the Court Fees Act, 1870, for grant of a Succession Certificate in respect of Post Office National Savings Certificates of the value of Rs.3,000/-	7- 10.
4)	C.No.7124/18-10-46.	Question whether in a suit for enhancement of rent from a permanent tenant, Court fees are payable under Sec.7(XI)(b), or under Article 1 of Sch. I of the Act.	11- 14.

972.
22/3.
Sm.

Letter 2

No.3139
Office of the S.L.A.
Bombay Castle,
27th April 1946.

To

The Superintendent of Stamps,
Bombay.

Subject:- Her Estate of K.D.Dewan Behram.

With reference to your letter No. 1242/p dated the 17th February 1946, on the above subject, I have the honour to state as follows:-

Section 19-J(1) of the Court-Fees Act, 1870 provides for payment of the fee mentioned in No.11 of the First Schedule on the valuation of the property in the form set forth in the Third Schedule. In the Annexure A in the Third Schedule all the property and credits of which the deceased died possessed or was entitled to at the time of his death and which have come or are likely to come to the hands of the applicant are required to be stated while in the Annexure B the amount of debts due and owing from the deceased payable by law out of the estate, amount of funeral expenses etc. should be stated; and after deducting the latter from the former the fee will have to be paid under No.11 of the First Schedule on the balance. In re, Ezekiel Joshua Abraham (21 Bom.139 at page 149) it has been held that probate duty is payable only on the assets which at the date of the testator's death are in British India. The words " possessed or was entitled to " in Annexure A in the Third Schedule mean possessed or entitled to in British India. If the assets of the testator in British India only are to be included stated in the Annexure A, by parity of reasoning the debts of the testator payable only in British India should be stated in the Annexure.

2. Consequently the words " payable by law" in the Annexure B would mean payable by law in British India. The deceased testator in the present case had to pay to the Sudanese Government Francs 12,258.20 as taxes. This claim of the Sudan Government being unenforceable in British India (see rule 34(a) of Dicey's Conflict of Laws page 212) the applicant will not be entitled to state it in the

Annexure B and claim deduction for the purpose of fee. The funeral expense of Francs 1300 is payable out of the estate of the deceased testator even in British India. This amount can therefore be properly sta ted in the Annexure B and ~~x~~ deducted from the assets specified in the Annexure A.

2. The Copy of the affidavit and other papers received with your letter under reference are returned herewith.

Sd/.....P.N.N. 26/4/46.

Remembrancer of Legal Affairs.

DYR.

21/5.

DYR.

The question for the consideration of the R.L.A. is whether interim applications made to the Debt Adjustment Boards are liable to any Court-fee.

Section 6 of the Court-fees Act, 1870, provides that except in the Courts here inbefore mentioned no document of any kinds specified as chargeable in the first or second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules. The question is whether a Debt Adjustment Board is a Court of justice. " Court of Justice" is not defined in the Court fees Act. In the Second Schedule to the Act the expression " Civil, Criminal or Revenue Court" is used, The terms " Civil Court", "Criminal Court" and "Revenue Court" have not also been defined in the Act. When read with section 6 these courts appear to mean Courts of Justice. Consequently a Debt Adjustment Board would be a civil court within the meaning of the Second Schedule to the Court-fees Act provided it is a court of Justice.

Section 20 of the Indian Penal Code defines "Court of Justice" as denoting a Judge who is empowered by law to act judicially alone, or a body of judges which is empowered by law to act judicially as a body when such judge or body of judges is acting judicially. Illustration to that section says:

> " A panchayat acting under Regulation VII,1816, of the Madras Code, having power to try and determine suits, is a Court of Justice."

Under section 6(1) of the Bombay Agricultrual Debtors Relief Act subject to the provisions of this Act the Board shall have full power to decide all questions whether of title or priority or of any nature whatsoever

and whether involving matters of law or fact, which may arise in any case within the cognisance of the Board or which the Board may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete adjustment of debts in any such case. Section 8 provides that all proceedings under this Act before the Board shall be deemed to be judicial proceedings for the purposes of sections 193 and 228 of the Indian Penal Code. The framers of the Court- fees Act, 1870 may have had in view the definition of " Court of Justice" in section 20 of the Indian Penal Code, 1860,. If this presumption be correct, it would be reasonable to hold that a Board constituted under the Bombay Agricultrual Debtors Relief Act is " a Court of Justice" and hence a Civil Court within the meaning of the Second Schedule to the Court- fees Act.

Mr. La d, District Judge, Poona, appears to hold that interim applications made to Debt Adjustment Boards a re not liable to Court-fees on the following grounds:-

(a) There is no provision in the Act for the levy of court-fees upon interim application. From the scheme of the Act it appears that where it wa s the intention to levy court-fees special provision has been made for that purpose. See for example section 11, section 18(2), section 23(4).

(b) A Debt Adjustment Board is not a civil Court for the purposes of the Code of Civil Procedure (See 47 B.L.R. 852).

(c) It is a well settled principle of law that all charges upon the subject must be imposed by a clear and unambiguous language.

There can be no dispute in respect of ground (c). But the mere fact that special provisions have been made

in section 11, 18(2) and 23 prescribing the Court-fees to be levied on appeals, applications filed under section 17 and applications for recording settlements does not warrant an inference that the Legislature did not intend levy of court-fees on interim applications. The Court-fees Act is a general Act and will apply except where it has been modified or excluded. The special provisions in section 11, 18(2) and 23 of the Bombay Agricultural Debtors Relief Act only mean that the Court-fees prescribed in these sections will have to be levied instead of the court-fees which would otherwise have been levied under the Court-fees Act. It follows therefore that even in the absence of any express provision in the Bombay Agricultural Debtors Relief Act the interim applications would be liable to court-fees under Schedule II to the Court fees Act provided the Boards to which such applications are made are Civil Courts. Ground (a) does not therefore appear to be valid.

It is true that in people's own Provident and General Insurance Co. v. Gurusharya (47 B.L.R. 892) the Bombay High Court has held that a Debt Adjustment Board is not a Court subordinate to the High Court in order to attract the application section 115 of the Civil Procedure Code. * Every Judgement is an authority for what it actually decides and cannot be quoted as an authority for a proposition that may seem logically to follow from it". (See Quinn v. Leathem, 1901 A.C. 495). Consequently the aforesaid judgment of the Bombay High Court would not be a proper authority for holding that a Debt Adjustment Board is not a Civil Court within the meaning of the Schedule II to the Court-fees Act.

In his opinion No.2, dated 4th February 1946 (Copy annexed) the Advocate General has expressly opined that the essential characteristics of a Court are present in a Debt Adjustment Board's constitution and power and that the Board is a Court for the purposes of section 11 of the Indian

Soldiers Litigation Act.

On this view of the case, although the point is not quite free from doubt it is possible that the High Court may hold a Debt Adjustment Board to be a Civil Court within the meaning of Schedule II to the Court-fees Act read with section 6, in which case all interim applications would be liable to court-fees. If however Government considers that no Court-fees should be levied on such applications, Government may issue suitable directions to the Debt Adjustment Boards in the matter, not on the ground of illegality, but on the ground that all such applications should be treated as oral applications (See Chitaley's Court-fees Act, pp. 78, 79, and 461)

Sd.....24/7/46.
Remembrancer of Legal Affairs/

U.R. to R.D. No. 5242 dated the 25th July 1946.

DIR.
22/5.
So.

Letters.

No.5544.

Office of the Remembrancer
of Legal Affairs,
Bombay Castle, 8th August 1946.

To

The District Government Pleader,
BARAMATI.

Subject:- Remembrancer on Succession Certificates.

With reference to your letter No. 221, dated the 19th June 1946, on the above subject, I have the honour to forward herewith my opinion in the matter.

Ref. 7/8/46.

Remembrancer of Legal Affairs

Submitted for Signature.

P.A.

R.L.A.

A.A.L.R.(before issue)

RR.

22/8.

Sc.

The question for R.L.A's consideration is whether fees are chargeable under the Court-fees Act, 1870, for grant of a succession certificate in respect of Post Office National Saving Certificates of the value of Rs.5,000/-

Sub-section(1) of section 4 of the Post Office National Saving Certificates Ordinance, 1944, enacts that if a person dies and is at the time of his death the holder of savings certificate, payment of the sum for the time being due thereon may be made in the manner provided in the Government Savings Banks Act, 1873, for the payment of deposits belonging to the estates of deceased persons, and the provisions of section 4 to 9 of the said Act shall apply accordingly as if the holder of the Savings certificate were a depositor in Government Savings Bank and the sum for the time being due on the certificate were a deposit in such a Bank. The first proviso provides that in such application, section 6 of the said Act shall be construed as if the reference therein to three thousand rupees were a reference to the amount of the maximum holding of Saving Certificates prescribed in the rules made or deemed to have been made under this Ordinance, applicable to the particular savings certificate. Rule 3(4)(a) of the Post-Office National Savings Certificates Rules, 1944, provides that the maximum holding of Certificates purchasible for any one person or on behalf of any one person shall be rupees five thousand. Consequently, under the first proviso to section 4(1) of the Post-Office National Savings Certificates Ordinance, 1944, read with rule 3(4)(a), reference to " three thousand rupees" in section 6 of the Government Savings Banks Act, 1873, in its application to the Savings Certificates will be construed as reference to " five thousand rupees" . As in the present case, the value of the Certificates held by the deceased does not appear to exceed rupees five thousand, under the first proviso to section 4 of the Post Office National Savings

certificates Ordinance, 1944, read with section 8 of the Government Savings Banks Act, the Succession certificate in respect thereof would be exempt from court-fees.

3d/.....7/8/46.

Remembrancer of Legal Affairs.

Submitted with issue with an
Index Cour (p. ... post)
2 filedin O. Court Fees/46.

DYR.
22/5.
5e.

XL. No. 7124

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 18th October 1946.

Subject:- District Court, Satara, Civil Appeal No. 269 of 1946 Shrimant W.S.Part Hantal vs.L. Bhau Bahadur V.A.Nasin and others.

MEMORANDUM

With reference to his letter No. 563 dated the 5th August 1946 on the above subject, a copy of the opinion of R.L.A. in the matter is forwarded herewith to the District Government Pleader, Satara.

Sd/..... Fe. is signed by S.A.S.
for Remembrancer of Legal Affairs.

To

the District Government Pleader,
SATARA

DIR.
22/9
Se.

In Prasannadeb Raikat vs. Feoma Chandra Shah (61 Cal.,513) it has been held that " a tenant having a right of occupancy" in Section 7 para. (XI)(b) of the Court- fees Act, 1870 is a tenant having a right to be in actual possession of land and does not include a person having superior interest. A permanent tenant on possession a superior /interest (see Section 6) of the Land Revenue Code, 1879). Consequently the decision of the Calcutta High Court in Prasannadeb Raikat vs. Feoma Chandra Shah will apply and a suit by a landlord for the enhancement of rent of his permanent tenant will not fall under section 7 para. (XI)(b) of the Court-fees Act, 1870. The view taken by the District Government Pleader appears prima facie to be correct.

Since the matter is subjudice, it is for the Court to decide and it is inadvisable that any law officer of Government should express any opinion on such matter. It is not therefore proposed to refer the question to the Advocate General for opinion.

Sd/.....11./10.

for Remembrancer of Legal Affairs.

RR.

22/X.

Se.